

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

ADAM BENNER,
dba ADAM BENNER TRUCKING AND
DOZING;

Guthrie County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2010-AQ- **32**
NO. 2010-SW- **28**

IO: Adam Benner
3215 248th Trail
Panora, IA 50216

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Adam Benner for the purpose of resolving violations related to illegal solid waste disposal, including the illegal open burning of solid waste. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Dan Stipe, Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic IA 50022
Phone: 712-243-1934

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E 9th St.
Des Moines, IA 50319
Phone: 515-281-8889

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part

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1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Adam Benner, dba Adam Benner Trucking and Dozing, is engaged in the business of trucking, dirt work, septic system work, and well plugging.

2. On March 29, 2010, Stephen Patterson, Guthrie County Sanitarian, observed the illegal open burning of waste tires by Adam Benner at a site located in Section 18, Township 80 North, Range 30 West. Mr. Benner was engaged in earthmoving and clean-up at this site. Mr. Patterson spoke with Mr. Benner who acknowledged the burning but indicated that he did not believe this practice was illegal.

3. On March 30, 2010, Mr. Patterson provided his investigative report and photographs to the DNR.

4. On April 9, 2010, the DNR issued a Notice of Violation to Adam Benner for the illegal disposal of solid waste, including the illegal open burning of waste tires.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2 states that no person shall allow, cause, or permit open burning of combustible materials except as provided in subrules 567 IAC 23.2(2) (variances) and 567 IAC 23.2(3) (exemptions). The burning documented in this matter does not fall under 567 IAC 23.2(2) exemptions and the burning of trade wastes is specifically prohibited. The above facts demonstrate a violation of this provision.

3. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The DNR has documented violations of these provisions by Adam Benner.

V. ORDER

THEREFORE, the DNR orders and Adam Benner agrees to pay a penalty in the amount of \$750 within 30 days of the execution of this administrative consent order.

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VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$750. The administrative penalty is determined as follows:

Economic Benefit – Adam Benner has achieved an economic benefit from the violations documented herein. The illegal open dumping and open burning of solid waste results in the avoidance of time, labor and disposal costs. Based upon the limited number of tires involved in this case, only \$50 is assessed for this factor.

Gravity – The illegal open burning of waste tires releases toxins that endanger human health and the environment. The open burning of waste tires can produce toxic runoff that pollutes ground and surface waters. Therefore a penalty of \$500 is assessed for this factor.

Culpability – Adam Benner is in a business which requires routine waste disposal. Due to his involvement in clearing and grubbing, it is likely that Mr. Benner frequently engages in the burning of clearing and grubbing wastes such as trees and bushes. Mr. Benner has a duty to be aware of the applicable regulations. However, this appears to be the first violation on record. Therefore, in light of these facts \$200 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS


This administrative consent order is entered into knowingly and with the consent of Adam Benner. For that reason Adam Benner waives his rights to appeal this administrative consent order or any part thereof.

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VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Total compliance with all provisions of Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 27 day of
July, 2010.



ADAM BENNER

Dated this 19 day of
July, 2010

Field Office #4; VI.C; VII.C.1